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ACTION EUR-00

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	DS-00	EAP-00	FBIE-00	UTED-00	FRB-00	H-00	TEDE-00
	INR-00	LAB-01	L-00	DCP-00	NSAE-00	NIMA-00	SCT-00
	SP-00	IRM-00	SSO-00	SS-00	TEST-00	ASDS-00	FMP-00
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FM AMCONSUL HAMBURG  
TO SECSTATE WASHDC IMMEDIATE 1559  
INFO AMEMBASSY BERLIN  
FRG COLLECTIVE 0619  
EU INTEREST  
DEPT/JUSTICE 0002

UNCLAS HAMBURG 0060

DEPT FOR EUR/AGS, EUR/PPD, L/LEI, AND S/CT  
JUSTICE FOR TERESA WALLBAUM, MIKE BURKE

SENSITIVE BUT UNCLASSIFIED

E.O. 12958: N/A  
TAGS: PTER, KJUS, PREL, GM  
SUBJECT: TERRORISM: RETRIAL OF 9/11 SUSPECT  
MOTASSADEQ

REF: A) BERLIN 808 AND PREVIOUS  
B) 03 HAMBURG 4058

1. (U) Message is sensitive but unclassified. Please protect accordingly. Do not disseminate over the Internet.

2. (SBU) SUMMARY: The retrial of 9/11 suspect Mounir el-Motassadeq began on August 10 at the Hamburg Superior Court (Oberlandesgericht). Motassadeq was serving a 15-year sentence on 3,000 counts of accessory to murder and membership in a terrorist organization charges stemming from the 9/11 attacks. The highlight of the first three days of testimony has been the provision by the U.S. Department of Justice of unclassified summaries of interrogation reports from Ramzi Binalshibh and Sheikh Mohammed. The trial has to date also featured testimony from Shahid Nickels and Ahmed Maglad, both of whom interacted with Motassadeq and 9/11 cell members prior to September 2001 (both also testified at the first trial). The anticipated September 15-16 testimony of an FBI agent will provide another trial

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highlight. The court has scheduled sessions through December 2004, with the possibility of extending the trial into 2005 if needed. END SUMMARY

### ----- Retrial Recap -----

3. (SBU) On March 4, 2004 the Federal High Court (Bundesgerichtshof) in Karlsruhe overturned the Hamburg Superior Court's conviction of suspected 9/11 accomplice Mounir el-Motassadeq and ordered a retrial. In its 21-page decision, the High Court argued that the Hamburg court had failed to adequately consider the fact that authorities had refused to make available potentially exculpatory testimony from 9/11 suspect Ramzi Binalshibh and others. (note: The lack of access to this testimony had also figured prominently in the February 5, 2004 acquittal by the Hamburg Superior Court of fellow 9/11 suspect Abdelghani Mzoudi. End note).

4. (SBU) The Hamburg Superior Court subsequently released Motassadeq (April 7) pending his retrial. The court release ruling noted that although there was still "dringende" (strong) evidence of his membership in a terrorist organization, the evidence regarding his involvement as an accessory in the 3,000 9/11 deaths was downgraded to "hinreichend" (adequate). The ruling further stated that the new presumed maximum sentence (if found guilty of the membership charge) is 1-10 years. The ruling outlined the court's thinking, but did not bind prosecutors to drop the accessory charge. Prosecutors have in fact proceeded with both the membership and accessory charges for the retrial (Comment: most observers view the court ruling as de facto removing the accessory charge from consideration - only strong new evidence regarding Motassadeq's involvement in the 9/11 deaths could bring the charge back into play. End Comment).

### ----- DOJ Documents: Something for Everyone -----

5. (SBU) Unclassified DOJ interrogation summaries for Binalshibh and Sheikh Mohammed were introduced on the first day of the trial. The prosecution underlined the questionable truthfulness of the detainees, but highlighted that Mohammed's admission of having met Motassadeq in Pakistan was new information further tying the defendant into the heart of al Qaeda. The defense highlighted the fact that both Binalshibh and Mohammed claimed Motassadeq had no knowledge

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of the 9/11 plot, but also questioned the legitimacy of any interrogation results, as they were "probably the result of torture". The judge stated that the summaries should be carefully weighted when considering their usefulness.

(Comment: A number of legal experts have indicated that the content of the summaries may be less relevant to the trial outcome than the judges view of whether the summaries are adequate replacements for full interrogation transcripts. End Comment)

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### ----- Nickels and Maglad Testimony -----

6. (SBU) The August 17 session featured testimony by Shahid Nickels, who associated with members of the Atta cell in Hamburg between 1997 and 1999. Nickels was also a key witness at the previous Motassadeq and Mzoudi trials. His testimony tracked his previous trial statements -- that Motassadeq was intimately involved in jihad discussions, had participated in general discussions re: attacking the U.S, and was "number five" in the cell structure in Hamburg. (Comment: Nickels' testimony is seen as believable and central to tying Motassadeq into the 9/11 cell -- it also can be viewed as refuting the statements by Binalshibh and Mohammed re: Motassadeq's non-involvement in the Hamburg cell. End Comment.)

7. (SBU) The August 18 session featured Ahmed Maglad, a Sudanese student who was also associated with the Hamburg cell and knew all the 9/11 actors. Maglad had testified at the previous Motassadeq trial; he had stated that Motassadeq had become "radicalized" in the period leading up to 9/11. During his August 18 testimony Maglad stated only that Motassadeq seemed to have reached a "higher level" in his religious pursuits at that time -- noting that his wife had begun to wear a veil. However, upon questioning Maglad also indicated that he believed his statements during the first trial regarding Motassadeq's radicalization had been overdrawn and that he wanted to "withdraw" his previous statements.

8. (SBU) Responding to prosecutor's questions, Maglad indicated that Atta asked him whether he was ready to fight for Jihad. Maglad responded that he had indicated his readiness to support the struggle through financial support (funds for fighters in Bosnia). (Comment: This point had also been raised during the first trial -- the inference being that Atta may have been testing

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Maglad regarding possible active participation in 9/11.  
A further inference is that Motassadeq passed this same test  
and was then assigned activities to support the 9/11 plan.  
End Comment)

9. (SBU) COMMENT: The Nickels and Maglad testimony have  
generally tracked with their statements at the first trial.  
However, the introduction of the DOJ interrogation summaries  
has introduced a new factor into the process. Head judge Schudt  
and his panel will have to determine whether the summaries  
provide usable information and how to evaluate the lack of  
access to the full interrogation transcripts. It is still  
too early in the trial to get a sense of potential outcomes;  
the fact that Motassadeq is now being tried only on the  
membership in a terrorist organization charge represents  
a major change from the first trial and could help the  
prosecution make its case. END COMMENT

10. (U) This message has been coordinated with Embassy  
Berlin.

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